

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Michael A. Singleton, # 344630,) C/A No.: 2:11-676-TLW-BHH
<i>f.k.a Michael A. Singleton # 1081861, Michael A.</i>)
<i>Singleton # 63483,</i>)
)
Plaintiff,)
)
vs.) Report and Recommendation
)
The South Carolina Department of Corrections;)
Kirkland R&E Institute; Warden Mackey,)
)
Defendants.)
)

Plaintiff Michael A. Singleton, proceeding *pro se*, files this action pursuant to 42 U.S.C. § 1983. Plaintiff is confined at the Kirkland Reception and Evaluation Center which is run by the South Carolina Department of Corrections, and files this action *in forma pauperis* under 28 U.S.C. § 1915. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge.

I. Factual Background

The Plaintiff, in his Complaint, states as follows:

The Plaintiff comes to the most honorable court of the Federal District of South Carolina, pursuant to his justice deprivation conflict of interest, existing with his Greenville S.C. District Court filings forcing him to the court to have fully processed *in forma pauperis*, & appointed legal counsel, for a[] competent assist to the Plaintiff's *pro se* pursuit of being justly compensated, for him being blatantly alienated from priviledges (sic) of an American Legal Citizen, within the defendants systematic use of terror, that holds the Plaintiff in a constant state of intense fear, to an inhumane degree. The Plaintiff submits this complaint for him being held a prisoner, in an institution that alienates him of basic, individual, human rights, to a[] cruel and unusual, punishing degree. The failure of this action's defendants to respond to Plaintiff's submitted requests and grievances from the week of his arrival, to the date of this writing 3-18-11, holds the Plaintiff denied his procedural due

process rights, to this state of S.C. government actor's enforcement actions, within the listed defendant's operations, that holds the Plaintiff abridged from immunities of a[] human being born in the USA. The established rules, regulations, policies, etc. has subjected the Plaintiff to him being alienated from the human right to 3 edible (sic) menus a day, subjecting him to a cruel and unusually punishing sentence of a[] 6 day 5 night hospital stay and numerous days of recovering from the inhumane provided meals. The discriminating policies of the R&E inmates in the defendants policies, alienate him from priviledges (sic) of other inmates. The Plaintiff seeks a[] punitive awarding to be determined by a jury, for the defendant's subjecting him to cruel and unusual punishment.

See Complaint.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint pursuant to the procedural provisions of 28 U.S.C. § 1915; 28 U.S.C. § 1915A; and the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996). This review has been conducted in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25, 112 S.Ct. 1728 (1992); *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827 (1989); *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972); *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951 (4th Cir. 1995)(*en banc*); and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983).

The complaint herein has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action "fails to state a claim on which relief may be granted" or is "frivolous or malicious." 28 U.S.C. §1915(e)(2)(B)(I), (ii). A finding of frivolity can be made where the complaint

"lacks an arguable basis either in law or in fact." *Denton v. Hernandez*, 504 U.S. at 31. Hence, under 28 U.S.C. §1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. *Neitzke v. Williams*, 490 U.S. 319 (1989).

This court is required to liberally construe *pro se* documents, *Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285 (1976), holding them to a less stringent standard than those drafted by attorneys, *Hughes v. Rowe*, 449 U.S. 5, 101 S. Ct. 173 (1980) (*per curiam*). Even under this less stringent standard, however, the *pro se* petition is subject to summary dismissal. The mandated liberal construction afforded *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a petition to "conjure up questions never squarely presented" to the court. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir. 1990).

B. Analysis

Plaintiff names the South Carolina Department of Corrections as a Defendant in this action. The South Carolina Department of Corrections is an agency of the State of South Carolina. The Eleventh Amendment to the United States Constitution divests this court of jurisdiction to entertain a suit brought against the State of South Carolina or its integral parts.¹ See *Alden v. Maine*, 527 U.S. 706, 713 (1999) (immunity "is a fundamental aspect

¹

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any

of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today...except as altered by the plan of the Convention or certain constitutional Amendments."); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 76 (1996)(Eleventh Amendment prohibits Congress from making the State of Florida capable of being sued in federal court); and *Blatchford v. Native Village of Noatak and Circle Village*, 501 U.S. 775, 786 (1991)(Congressional power to abrogate Eleventh Amendment immunity can only be exercised by clear legislative intent). See also *Federal Maritime Commission v. South Carolina State Ports Authority, et. al.*, 535 U.S. 743, 743 (2002)(state sovereign immunity precluded Federal Maritime Commission from adjudicating a private party's complaint against a non-consenting State).

Although the language of the Eleventh Amendment does not explicitly prohibit a citizen of a state from suing his own state in federal court, the Supreme Court in *Hans v. Louisiana*, 134 U.S. 1 (1889), held that the purposes of the Eleventh Amendment, i.e., protection of a state treasury, would not be served if a state could be sued by its citizens in federal court. Thus, the Eleventh Amendment bars such suits unless the State has waived its immunity² or unless Congress has exercised its power under § 5 of the Fourteenth Amendment to override that immunity. When §1983 was passed as part of the Civil Rights Act of 1871, Congress did not interject any language in the Act which would

Foreign State."

²

The State of South Carolina has not consented to suit in a federal court. See S. C. Code Ann. § 15-78-20(e)(1976) which expressly provides that the State of South Carolina does not waive Eleventh Amendment immunity, consents to suit only in a court of the State of South Carolina, and does not consent to suit in a federal court or in a court of another State.

specifically override the immunity of the states provided by the Eleventh Amendment. Consequently, a claim brought pursuant to 42 U.S.C. §1983 does not override the Eleventh Amendment. See *Quern v. Jordan*, 440 U.S. 332, 343 (1979).

Additionally, the clear language of § 1983 requires that a “person” may be sued by another where a deprivation of constitutional rights can be shown. In the case of *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 (1989), the Supreme Court analyzed the interplay between § 1983 and the Eleventh Amendment of the Constitution, and expressly held that the states are not “persons” within the meaning of § 1983. Because the Eleventh Amendment provides an absolute immunity for the states against all suits, the “person” referred to in § 1983 cannot include a state or any divisions of a state. Consequently, the South Carolina Department of Corrections would be entitled to summary dismissal.

Plaintiff has also named the “Kirkland R&E Institute” as a Defendant in this action. A claim for relief under § 1983, must sufficiently allege that the plaintiff was injured by “the deprivation of any [of his or her] rights, privileges, or immunities secured by the [United States] Constitution and laws” by a “person” acting “under color of state law.” See 42 U.S.C. § 1983. It is well settled that only “persons” may act under color of state law, therefore, a defendant in a § 1983 action must qualify as a “person.” For example, several courts have held that inanimate objects such as buildings, facilities, and grounds are not “persons” and do not act under color of state law. See *Preval v. Reno*, 57 F. Supp.2d 307, 310 (E.D. Va. 1999) (“[T]he Piedmont Regional Jail is not a ‘person,’ and therefore not amenable to suit under 42 U.S.C. § 1983.”), and *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301(E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the

jail is not a person amenable to suit."). "Kirkland R&E Institute," where Plaintiff is incarcerated, consists of buildings and grounds and is therefore not a person subject to suit in a Section 1983 action.

RECOMMENDATION

Accordingly, it is recommended that the defendants South Carolina Department of Corrections and Kirkland R&E Institute be dismissed *without prejudice* and without issuance and service of process. See 28 U.S.C. § 1915A [the court shall review, as soon as practicable after docketing, prisoner cases to determine whether they are subject to any grounds for dismissal.].

s/Bruce Howe Hendricks
United States Magistrate Judge

June 29, 2011
Charleston, South Carolina

The Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).